SUBJECT: Charles G. Harris Construction, Harris Concrete, d/b/a Wayne Harris, d/b/a Charles Harris, d/b/a Charles Harris Cement

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TO: Robert H. Miller, Regional Director Region 20

SUBJECT: Charles G. Harris Construction, Harris Concrete, d/b/a Wayne Harris, d/b/a Charles Harris, d/b/a Charles Harris Cement

Case 20-CA-20642, 20-CA-20514
A.D. 03191
November 30, 1988

***1** DIGEST NO.S:

Section 8(f) Chron 530-6083-1000, 590-0100, 737-2800

These cases were resubmitted for advice on whether certain language in the parties' contract constitutes sufficient evidence that the Employer and the Union established a Section 9(a) relationship under Deklewa[1] and Brannan Sand and Gravel.[2]

The facts of these cases are set forth in the Advice Memorandum dated July 23, 1987. There, we concluded that a Section 9(a) relationship between the Employer and the Union was established by the parties' 1980 Memorandum Agreement containing an Employer affirmation that the Union was the majority representative of the Employer's laborers. That agreement also incorporated by reference the Union's area master agreement.[3]

The 1980 agreement is the only evidence of the nature of the bargaining relationship. Thus, no Board election was held in the bargaining unit. The Employer ceased doing business before these charges were filed, and its owner has been unavailable to provide information regarding the nature of any Union showing of majority support when the 1980 agreement was executed. The owner's son, whose business may be an alter ego or successor to the Employer, does not know any details about the execution of that agreement. Also, the Union official who signed the agreement is dead. Hence, neither party to this agreement can present extrinsic oral or documentary evidence about the Union's representational status.

We conclude that the Employer and the Union intended to and did establish a Section 9(a) relationship when they executed the 1980 Memorandum Agreement. As noted above, the Memorandum Agreement incorporates the Union's master agreement, which recognized the Union as the collective-bargaining representative for the Employer's laborers. The master agreement's recognition clause, without more, would not overcome the presumption of a Section 8(f) relationship, since majority status, as opposed to exclusivity, distinguishes Section 9(a) from Section 8(f) relationships. The Memorandum Agreement, however, also includes the sentence, "[t]he individual Employer affirms that he is a current employer of Laborers, the majority of whom are represented by the Union." This sentence, combined with the master agreement's recognition clause, does overcome the presumption that the Employer and the Union had a Section 8(f) relationship. According to this language, laborers worked for the Employer when the agreement was signed and recognition extended, and a majority of those laborers supported the Union. Therefore, the contract on its face demonstrates that the parties intended to create a Section 9(a), rather than a Section 8(f), relationship.

***2** There is no reason to infer that the Employer signed the 1980 agreement containing this affirmation before the Union presented authorization cards or demonstrated to the Employer other evidence of majority support. If anything, we would infer that the Employer and the Union would have changed any inapplicable or incorrect wording. Therefore, we conclude that the Memorandum Agreement language constitutes sufficient evidence that the Employer voluntarily recognized the Union as the Section 9(a) representative of its laborers on the basis of a showing of majority support.

Brannan Sand and Gravel, supra, does not require a different result. Brannan affirmed the Deklewa holding that a construction industry agreement is presumptively a Section 8(f) agreement, and that the party asserting that a Section 9(a) relationship was established bears the burden of proving that the union was certified after winning a Board election, or that

the employer voluntarily recognized the union after an affirmative showing of majority support of its employees.[4] However, Brannan reaffirmed those principles simply to support a finding that the legislative history of neither Section 8(f) nor Section 10(b) warrants a presumption that pre-1959 construction industry relationships are governed by Section 9(a). Brannan did not set forth the quantum of evidence required to establish that recognition was extended based on a showing of majority support; it merely held that a relationship's existence prior to 1959 is insufficient to do so. In fact, the respondent in Brannan, in contrast to the Employer here, indicated "the availability of oral and documentary evidence which it assert [ed] will demonstrate that the General Counsel cannot prove that the Union has 9(a) status." Brannan, supra, 289 NLRB No. 128, slip op. at 16-17.

Accordingly, the Region should process these cases further, as authorized earlier in the July 23, 1987 Advice Memorandum.

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OFFICE OF GENERAL COUNSEL

NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)

Footnotes

1 John Deklewa & Sons, Inc., 282 NLRB No. 184 (Feb. 20, 1987), enfd. 843 F.2d 770 (3d Cir. 1988).

2 Brannan Sand and Gravel Co., 289 NLRB No. 128 (July 20, 1988).

3 Section 2, paragraph B of the Union's master agreement provides:
The Employer and the individual employers covered hereby recognize and acknowledge the [Union] as the collective bargaining representative for the employees in the area aforementioned covering the jurisdiction of the Union.

4 Brannan Sand and Gravel, supra, 289 NLRB No. 128, slip op. at 6-8, citing Deklewa, supra, 282 NLRB No. 184, slip op. at 30, fn. 41.

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